

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

POWERHOUSE MARKS LLC,

Plaintiff,

v.

Case No. 04-73923
Honorable Patrick J. Duggan

CHI HSIN IMPEX, INC., COSTCO
WHOLESALE CORP., DICK'S SPORTING
GOODS, INC., DUNHAM'S ATHLEISURE CORP.,
MEIJER, INC., and WAL-MART STORES, INC.,

Defendants.

**OPINION AND ORDER DENYING AS MOOT DEFENDANT WAL-MART
STORES, INC.'S MOTION *IN LIMINE* TO EXCLUDE THE SECOND
SUPPLEMENTAL REPORT OF CREIGHTON G. HOFFMAN REGARDING
DAMAGES AND OPINIONS ARISING THEREFROM**

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on April 5, 2006.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Plaintiff Powerhouse Marks LLC ("Powerhouse") filed this lawsuit alleging that defendants' sale of certain fitness equipment infringes Powerhouse's trademarks thereby violating federal and state law. As damages for defendants' alleged infringement, Powerhouse sought *inter alia* a disgorgement of defendants' profits. Defendant Wal-Mart Stores, Inc. ("Wal-Mart") filed the pending motion on January 19, 2006, seeking to exclude the second supplemental report and testimony of Powerhouse's damages expert,

Creighton G. Hoffman, to the extent Mr. Hoffman's testimony and report address Wal-Mart's costs and profits for the alleged infringing products. On February 2, 2006, this Court issued an Opinion and Order holding *inter alia* that Powerhouse is not entitled to a disgorgement of Wal-Mart's profits. As a result of the Court's ruling, Powerhouse voluntarily withdrew Mr. Hoffman's second supplemental report and states that it will not introduce Mr. Hoffman's report or testimony on this subject at trial. *See* Docket #223.

Accordingly,

IT IS ORDERED, that Wal-Mart Store, Inc.'s Motion *In Limine* to Exclude the Second Supplemental Report of Creighton G. Hoffman Regarding Damages and Opinions Arising Therefrom is **DENIED AS MOOT**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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